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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Criminal Appeal No.158 of 2002	
	APPELLANTS: (In Jail)	1. Sanju @ Sanjay, S/o Kalamani, aged about 20 years. 2. Ramdayal, S/o Ramadhar Satnami, aged about 25 years. 3. Govardhan, S/o Nanukram Dhobi, aged about 37 years. 4. Baburao Tamane, S/o Nanarao Tamane, aged about 38 years. All residents of Kushtha Basti, Pandri, Raipur.
	- Versus -	
	RESPONDENT:	The State of Chhattisgarh.
	Criminal Appeal No.159 of 2002	
	APPELLANTS: (In Jail)	1. Vishram, S/o Bhurwa Nirmalkar, Aged about 25 years, R/o Kushtha Basti, Pandri, Raipur. 2. Santosh Singh Rawat, S/o Harnam Singh Yadav, Aged about 26 years, R/o Jaybati, P.S. Bhitarwar District Gwalior (M.P.) 3. Prahlad, S/o Sadh Ram Nirmalkar, Aged about 28 years, R/o Kushtha Basti, Pandri, Raipur.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
		4. Sheikh Sultan, S/o Sheikh Majid, Aged about 28 years, R/o Tarun Nagar, Pandri, Raipur. 5. Prahlad, S/o Laxman Singh Ghasiya, Aged about 22 years, R/o Kushtha Basti, Pandri, Raipur. 6. Raju Kosariya, S/o Jhanglu Ram Kosariya Aged about 24 years, R/o Kushtha Basti, Pandri, Raipur. - Versus - RESPONDENT: The State of Chhattisgarh.
		Criminal Appeal No.160 of 2002
		APPELLANTS: (In Jail) 1. Nandu @ Nand Kumar, S/o Baburao Tamane, aged about 17 years, R/o Kushtha Basti, Pandri, Raipur (C.G.) 2. Sanjay @ Sanju Adwani, S/o Govind Adwani, aged about 17 years, R/o Gandhi Nagar, Mathpara, Raipur (C.G.) 3. Manoj Kumar @ Tukesh, S/o Jethuram Druw, aged about 17 years, R/o Kushtha Basti, Pandri, Raipur (C.G.)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	- Versus -	
	RESPONDENT:	The State of Chhattisgarh.
	Criminal Appeal No.266 of 2002	
	APPELLANT: (In Jail)	Madhu Yadav, S/o Mangloo Yadav, aged 26 years, R/o Kushtha Basti, Pandri, P.S. Civil Line, Raipur (CG)
	- Versus -	
	RESPONDENT:	State of Chhattisgarh, Through P.S. Civil Line, Raipur (CG)
	Criminal Appeal No.312 of 2002	
	APPELLANTS: (In Jail)	1. Nandu @ Nand Kumar, S/o Babu Rao Tamne, Aged about 19 years, R/o Kusht Basti, Pandri, Raipur. 2. Babu Rao Tamane, S/o Nanarao Tamane, Aged about 28 years, R/o Kusht Basti, Pandri, Raipur. 3. Gendlal Patle, S/o Bhivaji Patle, Aged about 36 years, R/o Kusht Basti, Pandri, Raipur.
	- Versus -	
	RESPONDENT:	The State of Chhattisgarh,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Through the District Magistrate, Raipur (CG)

{Criminal appeals under Section 374 (2) of the Code of Criminal Procedure, 1973}

Present:

Mr. G.S. Ahluwalia, counsel for Manoj, Govardhan & Sanjay Adwani.

Mr. Rakesh Anthony, counsel for Nandu & Baburao.

Mrs. Indira Tripathi, counsel for remaining accused.

Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Division Bench: **Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Sunil Kumar Sinha, JJ.**

ORAL JUDGMENT

(Delivered on 15th October, 2007)

L.C. BHADOO, J.

1. Cr.A.No.158/2002 filed by Sanju @ Sanjay, Ramdayal, Govardhan & Baburao Tamane; Cr.A.No.159/2002 filed by Vishram, Santosh Singh Rawat, Prahlad – S/o Sadh Ram Nirmalkar, Sheikh Sultan, Prahlad – S/o Laxman Singh Ghasiya & Raju Kosariya; Cr.A.No.160/2002 filed by Nandu @ Nand Kumar, Sanjay @ Sanju Adwani & Manoj Kumar @ Tukesh; Cr.A.No.266/2002 filed by Madhu Yadav and Cr.A. No.312/2002 filed by Nandu @ Nand Kumar, Babu Rao Tamane & Gendlal Patle are being disposed of by this common judgment, as all these appeals are arising out of the same incident dated 22-4-2001 and same judgment

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

~~dated 5-2-2002 passed by the 3rd Additional Sessions Judge, Raipur~~ in Sessions Trial No.200/2001.

2. By these appeals the accused/appellants have questioned legality and correctness of the judgment of conviction and order of sentence dated 5-2-2002 passed by the 3rd Additional Sessions Judge, Raipur in Sessions Trial No.200/2001, whereby learned 3rd Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Sections 147, 148 & 302 read with Section 149 of the I.P.C. sentenced each of the accused/appellants to undergo R.I. for two years, R.I. for three years & imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for two months, respectively.

3. Case of the prosecution, in brief, is that at about 8.30 p.m. of 22-4-2001, the accused persons forcibly took Shailu @ Shailendra (since deceased) towards the Dharmshala of Leprosy patients situated in Pandri area of Raipur. They attacked him which was witnessed by mother of the deceased namely, Bantika Bai & younger brother of the deceased namely, Mukesh who followed them when Shailu @ Shailendra was being taken by the accused persons. The incident was also witnessed by Santosh, Shrawan, Sanjay Kumar & other persons. As a result of the beating given by the accused persons, Shailu @ Shailendra became unconscious.

4. The matter was reported by Bantika Bai, mother of the deceased, under Dehati Nalishi Ex.P-14 in Police Station: Civil Lines, Raipur, whereupon the first information report (Ex.P-14A) was registered by R.S. Tiwari, ASI,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

for offence punishable under Sections 147, 148 & 307 read with Section 149 of the I.P.C. Thereafter, merg intimation Ex.P-15 was sent by Rajesh Tiwari, Sub Inspector, from Mekahara Casualty Ward on 23-4-2001.

5. After registration of the case, the Investigating Officer took up the investigation. He left for the scene of occurrence and seized, plain soil, bloodstained soil, one piece of stone stained with blood, three pieces of bloodstained wood, one bamboo club stained with blood & one wooden Batta under Ex.P-2. One bamboo club stained with blood was seized from accused Madhu Yadav under Ex.P-3, one bamboo club was seized from accused Ramdayal Singh under Ex.P-4 and one bamboo Lathi stained with blood was seized from accused Santosh Singh Rawat under Ex.P-5. Site plan (Ex.P-7) of the place of occurrence was prepared by the Halka Patwari. After giving notice Ex. P-11A to the Panchas, the Investigating Officer prepared inquest Ex.P-12 on the body of Shailu @ Shailendra.

6. The body was sent to Medical College Hospital, Raipur for post-mortem under Ex.P-8 where Dr. Ulhas Gonnade conducted post-mortem on the body of Shailu @ Shailendra. He prepared report Ex.P-15 and opined that the death was due to shock & haemorrhage as a result of head injury. Injuries No.1 to 3 were caused by blunt & heavy object, injuries No.5, 7, 9 & 10 were also caused by blunt object, injuries No.4 & 6 were caused by blunt & small object, injuries No.12 & 13 were caused by hard & blunt object having irregular surface and injuries No.8, 10 & 14 were also caused by hard & blunt object. Injuries No.1 & 2 were sufficient in the ordinary course of nature to cause death.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

7. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Raipur, who in turn committed the case to the Sessions Judge, Raipur, from where learned 3rd Additional Sessions Judge, Raipur, received the case on transfer for trial.

8. The prosecution in order to establish charges against the accused persons examined 14 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which each of the accused denied the material appearing against them in the prosecution evidence and stated that they are innocent, they have been falsely implicated in the crime. The accused persons examined Panchanan Dewangan (DW-1) & Raju Dhanewar (PW-2) in their defence.

9. Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused persons as aforementioned.

10. We have heard learned counsel for the parties.

11. Learned counsel for the appellants have not disputed the homicidal death of Shailu @ Shailendra. Moreover, Dr. Ulhas Gonnade (PW-10), who conducted post-mortem on the body of Shailu @ Shailendra on 24th April, 2001, has stated in his evidence that there were as many as 16 injuries on the body of the deceased and out of those injuries, injury No.1 was lacerated wound near left ear & behind head in the size of 8 cms. x 1 cm. deep up to bone and depressed fracture in the size of 7.5 cms. x 2.5 cms. He has further stated that there was lacerated wound obliquely placed

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

~~near ear 8 cms. in length & 1.5 cms. in width, deep up to bone. He~~ has further stated that the above injuries were sufficient in the ordinary course of nature to cause death. On dissection of the body, he noticed that there was subdural & suborganised haemorrhage and injuries No.1 & 2 were sufficient in the ordinary course of nature to cause death. He has also stated that injuries No.1, 2 and all the injuries taken together were sufficient in the ordinary course of nature to cause death. The death was homicidal in nature. His report is Ex. P-15. Therefore, in view of the above evidence, it is established that the death of Shailu @ Shailendra was homicidal in nature.

12. As far as complicity of the accused persons in the crime in question is concerned, in this case, so called eyewitnesses namely, Dular Ram Sahu (PW-1), Sanjay Kumar Yadav (PW-2), Shrawan Mishra (PW-5) & Santosh (PW-6), who were said to be accompanying the deceased at the time of incident, have turned hostile and they have not supported the prosecution case. Conviction rests primarily on the evidence of Mukesh (PW-11), younger brother of the deceased aged about 11 years and Bantika Bai (PW-12), mother of the deceased.

13. Learned counsel for the appellants argued that in this case, no independent witness has supported the case of the prosecution. Mukesh (PW-11), being a child witness & real brother of the deceased and Bantika Bai (PW-12), mother of the deceased, are interested witnesses. Perusal of their evidence establishes that in fact, they had not witnessed the incident. Therefore, no explicit reliance can be placed on their evidence.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

14. On the other hand, Mr. Akhil Mishra, learned Panel Lawyer supported the judgment of the trial Court.

15. From the perusal of the evidence of Mukesh (PW-11) & Bantika Bai (PW-12) it is apparent that in fact, Bantika Bai (PW-12) had not witnessed the crime in question.

16. Mukesh (PW-11) in para 6 of his evidence has stated that when Shailu @ Shailendra fell down, the accused persons came running, he went to call his mother. When Shailu @ Shailendra became unconscious, he went to call his mother. He took 15 minutes to bring his mother. When he along with his mother reached on the spot, Shailu @ Shailendra was lying on the ground, 8-10 police persons were present there and no accused was present there. In para 2 he has stated that after the Marpeet was over and when his brother became unconscious, he went and disclosed the matter to his mother, at that time, his mother was at residence. After hearing from him, his mother rushed to the spot.

17. Even Bantika Bai (PW-12) has stated in para 2 of her evidence that her son came to inform her that the accused persons are attacking Shailu @ Shailendra near temple, thereafter, she went on the spot and accused persons were attacking his son with club, stone & rod. In para 5 of her cross-examination she has stated that it is correct to say that she was informed that Shailu @ Shailendra is lying unconscious and names of the accused persons were disclosed by Mukesh, she came to know the names of the accused persons only when Mukesh disclosed their names to her, before that she was not knowing. It is correct that the names of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the accused were disclosed by Mukesh to her and in turn she disclosed those names to the Police. In para 7 she has further stated that it is correct to say that she went to the place only when Mukesh came to her to call her, before that what the accused persons did with Shailu @ Shailendra she does not know. Therefore, from the scrutiny of the evidence of these two witnesses (PW-11 & PW-12), it is apparent that the attack made by the accused persons was not witnessed by Bantika Bai (PW-12).

18. In the circumstances, only the testimony of Mukesh (PW-11) remains to be scrutinized and it is to be seen as to whether based on the testimony of PW-11, the prosecution has been able to establish the fact that all the accused/appellants attacked the deceased.

19. Law regarding relative witness is well settled. Testimony of a witness related to the deceased or victim cannot be discarded merely on the ground that the witness is related to the deceased. However, the Court while appreciating the evidence of such witness is required to scrutinize the evidence with great care and circumspection in order to ascertain truthfulness and correctness of their version stated before the Court. It is also settled law that while appreciating the evidence, the Court is required to see that where the case involving serious offence is there, there must be a strict scrutiny of the evidence of the witness in order to ascertain truthfulness of the evidence of the witnesses.

20. In the matter of **Bhimappa Chandappa Hosamani & others vs. State of Karnataka {2006 (10) SBR 13}**, the Apex Court held that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

".....on the basis of the testimony of a single eyewitness a conviction may be recorded, but it has also cautioned that while doing so the Court must be satisfied that the testimony of the solitary eyewitness is of such sterling quality that the Court finds it safe to base a conviction solely on the testimony of that witness. In doing so the Court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the Court as wholly truthful, must appear to be natural and so convincing that the Court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness."

21. Bantika Bai (PW-12) has stated in her evidence that whatever names were disclosed by Mukesh to her, those names were given by her. Perusal of Dehati Nalishi Ex.P-14 given by Bantika Bai reveals that only ten names of the accused persons who said to have attacked the deceased are given in this Dehati Nalishi namely, Nandu, Sanju @ Sanjay, Madhu Yadav, Ram Dayal, Sanjay @ Sanju Adwani, Sheikh Sultan @ Bashir, Baburao, Gendlal, Manoj Gond & Sanju Gond. However, names of Prahlad – S/o Madhav, Prahlad – S/o Laxman, Raju Kosariya, Vishram, Santosh Singh Rawat are not mentioned in the Dehati Nalishi. Mukesh (PW-11) has stated that when Dehati Nalishi was lodged, he was also accompanying his mother to the Police Station and he was present in the Police Station, why the names of these five accused persons were not mentioned in the Dehati Nalishi and not given to the Police regarding the attack made by them also, reasons are best known to Mukesh. The evidence of Mukesh does not inspire confidence to the effect that he witnessed the incident, for the reason that he has

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आदेश पत्रक (पूर्वानुब्द्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

stated in para 2 of his evidence that accused Nandu, Prahlad, Ramdayal, Sanju & others whose names are not known to him took his brother to Kodhi Dharmshala where Nandu said that he be beaten on which they started beating. Nandu, Ramdayal & Madhu gave beating with club, Sanju Udiya, Prahlad, Raju & Gendlal attacked with lathi, whereas names of Prahlad & Raju have not been mentioned in the Dehati Nalishi.

22. Site plan Ex.P-7 prepared by Halka Patwari Biharilal Naik (PW-3) shows that the place of occurrence marked in red ink was near the temple. The Office of Leprosy Welfare Committee is ahead of the place where the accused persons, as per the version of Mukesh, attacked his brother Shailu @ Shailendra. The site plan was prepared at the instance of witnesses namely, Panchanan Dewangan. Therefore, there is contradiction between site plan and evidence of Mukesh regarding the place where the incident said to had taken place. Moreover, the Investigating Officer has not stated anything whether he prepared any site plan of the place of occurrence or not. This contradiction is material and it establishes that Mukesh had not witnessed the crime in question.

23. Mukesh (PW-11) in examination-in-chief has stated that Sultan picked up a stone lying on the place and attacked Shailu @ Shailendra with that stone. But this fact has neither been mentioned in the Dehati Nalishi nor in his police case diary statement Ex.D-1. This fact also further strengthens the doubt that this witness had not witnessed the incident. This witness in the first instance took the names of four persons namely, Nandu, Prahlad, Ramdayal, Sanju & others and further stated that he does not know the names of other accused persons, whereas in the

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second instance, he took the names of other persons who alleged to have attacked the deceased. Therefore, this instance is also suggestive of the fact that Mukesh had not witnessed the incident. Moreover, mother of Mukesh has stated that all names of the accused persons were given in Dehati Nalishi on disclosure by Mukesh, whereas as stated by Mukesh, only four persons took Shailu @ Shailendra, names of other persons are not known to him.

24. If the evidence of this witness is appreciated with the evidence of Sanjay Kumar Yadav (PW-2), even though he has turned hostile, but the evidence of a hostile witness can also be looked into. He has simply stated in his evidence that he saw accused Prahlad Singh, Prahlad Kurmi, Shyamlal, Sarju, Ramdayal & Madhu while taking Shailu @ Shailendra towards Shiv temple, he was following them, he saw that those persons gave beating with slap & fists, thereafter, they ran away. Other persons did not do anything to Shailu @ Shailendra. He has further stated in para 2 that at that time Mukesh and his mother might be at their residence, in fact, he was accompanying Shailu @ Shailendra at the time of incident. In para 2 he has categorically stated that Mukesh and his mother were at residence and they were not present. This fact further strengthens that Mukesh had not witnessed the incident. This witness in cross-examination has stated that Shailu @ Shailendra (deceased), Shrawan & Santosh were close friends, they used to harass the Leprosy patients of the vicinity and snatch money from them. Therefore, all the people of whole vicinity were enemies of these three

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

persons. In para 11 he has stated that 8-10 persons attacked Shailu @ Shailendra, but the accused persons were not there.

25. Mukesh (PW-11), brother of the deceased, in para 4 of his evidence has admitted that the day of incident was Sunday, whereas on Saturday his brother came after release from jail and on Sunday the Police of Civil Lines were also searching for Shailu @ Shailendra. It is correct to say that when his brother was not available Police took his father to the Police Station. This shows that deceased Shailu @ Shailendra was a person with criminal antecedents, he along with his friends used to quarrel with the people of vicinity and they used to snatch money, therefore, the people of that vicinity were having animosity against the deceased. Mukesh (PW-11) in para 13 of his cross-examination has further stated that on that day, Nandu & Babulal gave blow with club only once on the leg of the deceased, thereafter, they did not attack him. Further he has stated that Sanju gave one blow of club on the head of Shailu @ Shailendra, thereafter, he had not attacked the deceased, whereas, as many as 16 injuries have been noticed on the body of Shailu @ Shailendra by the doctor. Therefore, this evidence is contrary to the injuries found on the body of Shailu @ Shailendra. On this count also, the testimony of Mukesh (PW-11) regarding witnessing the attack made by the accused persons becomes doubtful.

26. Case of the prosecution is that all the 15 accused persons attacked the deceased with Lathis & clubs, whereas clubs have only been recovered from three accused persons namely, Ramdayal, Santosh & Madhu and nothing has been recovered from remaining accused persons.

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(88)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.158,159,160,266 and 312/2002 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	~~27. For the foregoing reasons, since the independent witnesses who~~ were present at the scene of occurrence have not supported the prosecution case and the evidence of solitary eyewitness namely, Mukesh (PW-11), being full of infirmities, does not inspire full confidence of the Court, no explicit reliance can be placed on the evidence of this witness in order to fasten the criminal labiality on all the 15 accused persons. Therefore, we are of the considered opinion that conviction and sentences imposed upon the accused/appellants for commission of offence under Sections 147, 148 & 302 read with Section 149 of the I.P.C. cannot be sustained. 28. In the result, a. the appeals filed by the accused/appellants succeed, their conviction and sentences under Sections 147, 148 & 302 read with Section 149 of the I.P.C. are set aside and they are acquitted of the above charges. b. It is stated that the accused/appellants namely, Nandu, Madhu, Ramdayal, Prahlad S/o Sadhram, Prahlad S/o Laxman, Raju, Gendlal & Sanju Udiya are in detention since April, 2001. Therefore, they be set at liberty forthwith, if not required in any other case. c. It is also stated that accused/appellants Vishram, Santosh Singh, Sheikh Sultan, Manoj Kumar, Baburao, Goverdhan & Sanju Adwani are on bail. Their bail bonds are discharged. They need not surrender before the Court. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**
Soma		